

**APR 30 2003****Fausto Louis Muncal-Clemente: 02-70574**

PREGERSON, Circuit Judge, dissenting in part:

CATHY A. CATTERSON  
U.S. COURT OF APPEALS

I respectfully dissent in so far as the panel denies Mr. Muncal-Clemente's petition for review of the BIA's denial of his application for a waiver of deportability. I believe the BIA abused its discretion by failing to consider a plainly relevant positive factor – hardship to an ailing parent – in assessing the merits of Mr. Muncal-Clemente's application. See *In Re Tijam*, Interim Decision 3372, 1998 BIA LEXIS 43, 11-12 (BIA 1998). Though the BIA, in its analysis, mentioned Mr. Muncal-Clemente's various family members, the BIA did not consider the particular hardships his elderly dependant mother would suffer were he to be deported.<sup>1</sup> Accordingly, I would reverse and remand.

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<sup>1</sup> When weighing factors in favor of an application for a waiver of deportability, the BIA takes into account the various hardships that would be endured by family members who are United States citizens, including non-financial assistance and care provided by the applicant. *In Re Tijam*, Interim Decision 3372, 1998 BIA LEXIS at 11-12. In the case before us, Mr. Muncal-Clemente, a tax auditor for the State of California, presented evidence that his 77 year-old mother, who suffers from arthritis, dizzy spells, and cataracts, would experience hardship above and beyond that of a normal adult were he to be deported. Most notably, Mr. Muncal-Clemente, who has lived with his mother since his arrival in the United States, cares for her by driving her to her medical appointments, taking off work to accompany her to the hospital in medical emergencies, picking up her medications, driving her to church, performing various household chores, and providing financial support. The record reveals that Mrs. Clemente's husband is not always able to drive her because he suffers from back problems. The record also reveals that of Mrs. Clemente's three children in the United States, Mr. Muncal-Clemente is the only child who assists

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her financially and drives her to her appointments. When asked if she would experience hardship if her son were deported, Mrs. Clemente replied “nobody is going to . . . assist me in whatever I have to do.”